

\_\_\_\_\_ BILL NO. \_\_\_\_\_

INTRODUCED BY \_\_\_\_\_  
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ALCOHOL OR DRUG CONCENTRATION TESTS; PROVIDING CRIMINAL PENALTIES FOR A SECOND OR SUBSEQUENT REFUSAL TO SUBMIT TO AN ALCOHOL OR DRUG CONCENTRATION TEST; AND AMENDING SECTIONS 61-5-212, 61-8-402, AND 61-8-409, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or revoked -- penalty -- second offense of driving without valid license or licensing exemption -- seizure of vehicle or rendering vehicle inoperable.** (1) (a)

A person commits the offense of driving a motor vehicle without a valid license or without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without possessing a valid driver's license, as provided in 61-5-102, or without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, ~~or 61-8-406~~, [section 4], or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall

1 be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed  
2 \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

3 (2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of  
4 driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and  
5 be issued a driver's license was suspended or revoked, the department shall extend the period of suspension  
6 or revocation for an additional 1-year period.

7 (b) Upon receiving a record of the conviction of any person under this section upon a charge of driving  
8 a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled  
9 or the person was disqualified from operating a commercial motor vehicle under federal regulations, the  
10 department shall suspend the person's commercial driver's license in accordance with 61-8-802.

11 (3) The vehicle owned and operated at the time of an offense under this section by a person whose  
12 driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, or 61-8-410  
13 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted  
14 person's county of residence for a period of 30 days.

15 (4) The sentencing court shall order the action provided for under subsection (3) and shall specify the  
16 date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered  
17 inoperable by the sheriff within 10 days after the conviction.

18 (5) A convicted person is responsible for all costs associated with actions taken under subsection (3).  
19 Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless  
20 the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who  
21 is determined to be without fault.

22 (6) A court may not suspend or defer imposition of penalties provided by this section."  
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24 **Section 2.** Section 61-8-402, MCA, is amended to read:

25 **"61-8-402. Blood or breath tests for alcohol, drugs, or both.** (1) A person who operates or is in actual  
26 physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a  
27 test or tests of the person's blood or breath for the purpose of determining any measured amount or detected  
28 presence of alcohol or drugs in the person's body.

29 (2) (a) The test or tests must be administered at the direction of a peace officer when:

30 (i) the officer has reasonable grounds to believe that the person has been driving or has been in actual

1 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs,  
2 or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

3 (ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

4 (iii) the officer has probable cause to believe that the person was driving or in actual physical control of  
5 a vehicle:

6 (A) in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision  
7 resulting in property damage; or

8 (B) involved in a motor vehicle accident or collision resulting in serious bodily injury, as defined in  
9 45-2-101, or death.

10 (b) The arresting or investigating officer may designate which test or tests are administered.

11 (c) Before administering one or more of the tests, the officer shall inform the person that the test may  
12 be refused but that refusal of the test for a second or subsequent time within 5 years is a misdemeanor for which  
13 the person may be punished as provided by law.

14 (3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of  
15 refusal is considered not to have withdrawn the consent provided by subsection (1).

16 (4) If an arrested person refuses to submit to one or more tests requested and designated by the officer  
17 as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the  
18 department, immediately seize the person's driver's license. The peace officer shall immediately forward the  
19 license to the department, along with a report certified under penalty of law stating which of the conditions set  
20 forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to  
21 submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the  
22 department shall suspend the license for the period provided in subsection (6).

23 (5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a  
24 temporary driving permit, which is effective 12 hours after issuance and is valid for 5 days following the date of  
25 issuance, and shall provide the driver with written notice of the license suspension and the right to a hearing  
26 provided in 61-8-403.

27 (6) (a) Except as provided in subsection (6)(b) and in addition to other penalties imposed pursuant to  
28 [section 5], the following suspension periods are applicable upon refusal to submit to one or more tests:

29 ~~———~~ (i) upon a first or subsequent refusal to submit to one or more tests, a suspension must be for a period  
30 of 6 months with no provision for a restricted probationary license;

~~———— (ii) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a suspension of 1 year with no provision for a restricted probationary license.~~

(b) If a person who refuses to submit to one or more tests under this section is the holder of a commercial driver's license, in addition to any action taken against the driver's noncommercial driving privileges and the imposition of other penalties pursuant to [section 5], the department shall:

(i) upon a first refusal, suspend the person's commercial driver's license for a 1-year period; and

(ii) upon a second or subsequent refusal, suspend the person's commercial driver's license for life, subject to department rules adopted to implement federal rules allowing for license reinstatement, if the person is otherwise eligible, upon completion of a minimum suspension period of 10 years. If the person has a prior conviction of a major offense listed in 61-8-802(2) arising from a separate incident, the conviction has the same effect as a previous testing refusal for purposes of this subsection (6)(b).

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regulation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in this part."

**Section 3.** Section 61-8-409, MCA, is amended to read:

**"61-8-409. Preliminary alcohol screening test.** (1) A person who operates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a preliminary alcohol screening test of the person's breath, for the purpose of estimating the person's alcohol concentration, upon the request of a peace officer who has a particularized suspicion that the person was driving or in actual

1 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in  
2 violation of 61-8-410.

3 (2) The person's obligation to submit to a test under 61-8-402 is not satisfied by the person submitting  
4 to a preliminary alcohol screening test pursuant to this section.

5 (3) The peace officer shall inform the person of the right to refuse the test, that refusal of the test for a  
6 second or subsequent time within 5 years is a misdemeanor, and that the refusal to submit to the preliminary  
7 alcohol screening test will result in the suspension ~~for up to 1 year~~ of that person's driver's license for 6 months  
8 and the imposition of other penalties under [section 5].

9 (4) If the person refuses to submit to a test under this section, a test will not be given. However, the  
10 refusal is sufficient cause to suspend the person's driver's license as provided in 61-8-402 and to impose  
11 additional penalties under [section 5].

12 (5) A hearing as provided for in 61-8-403 must be available. The issues in the hearing must be limited  
13 to determining whether a peace officer had a particularized suspicion that the person was driving or in actual  
14 physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol or in  
15 violation of 61-8-410 and whether the person refused to submit to the test.

16 (6) The provisions of 61-8-402(3) through (8) that do not conflict with this section are applicable to  
17 refusals under this section. If a person refuses a test requested under 61-8-402 and this section for the same  
18 incident, the department may not consider each a separate refusal for purposes of suspension under 61-8-402.

19 (7) A test may not be conducted or requested under this section unless both the peace officer and the  
20 instrument used to conduct the preliminary alcohol screening test have been certified by the department pursuant  
21 to rules adopted under the authority of 61-8-405(5)."

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23 **NEW SECTION. Section 4. Unreasonable refusal to submit to test.** (1) It is unlawful for a person to  
24 refuse for a second or subsequent time within 5 years to submit to a blood or breath test requested in accordance  
25 with 61-8-402 or a preliminary alcohol screening test requested in accordance with 61-8-409. A person who  
26 violates this section is guilty of a misdemeanor and upon conviction shall be punished as provided in [section 5].  
27 Evidence of a person's refusal to submit to a test may be introduced to show a violation of this section, but a  
28 refusal to submit to a test pursuant to this section and to submit to a test pursuant to 61-8-402 may not be  
29 considered as separate offenses.

30 (2) A court may not suspend or defer imposition of a sentence for violation of this section.

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2       **NEW SECTION. Section 5. Penalty -- unreasonable refusal to submit to test.** (1) Upon a first  
3 conviction of a violation of [section 4], a person is guilty of a misdemeanor and shall be punished by a fine of not  
4 less than \$300 or more than \$1,000 and by imprisonment for not less than 24 consecutive hours or more than  
5 6 months. The initial 24 hours of the imprisonment term must be served and may not be served under home  
6 arrest. The mandatory imprisonment sentence may not be suspended unless the judge finds that the imposition  
7 of the imprisonment sentence will impose a risk to the person's physical or mental well-being.

8       (2) On a second or subsequent conviction of [section 4], the person is guilty of a misdemeanor and shall  
9 be punished by a fine of not less than \$600 or more than \$1,000 and by imprisonment for not less than 5 days  
10 or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively and may not  
11 be served under home arrest. The imposition or execution of the first 5 days of the imprisonment sentence may  
12 not be suspended.

13       (3) (a) Upon conviction under [section 4], in addition to the penalties provided in subsection (1),  
14 regardless of the disposition, the court shall order that each motor vehicle owned by the person at the time of the  
15 offense be equipped with a functioning ignition interlock device for a 12-month period beginning with the end of  
16 the period of driver's license suspension. The person shall pay the reasonable cost of leasing, installing, and  
17 maintaining the device.

18       (b) Any restriction imposed under subsection (3)(a) must be included in a report of the conviction made  
19 by the court to the department in accordance with 61-11-101 and must be placed upon the person's driving record  
20 maintained by the department in accordance with 61-11-102.

21       (c) The duration of a restriction imposed under subsection (3)(a) must be monitored by the department.  
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23       **NEW SECTION. Section 6. Codification instruction.** (1) [Section 4] is intended to be codified as an  
24 integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 4].

25       (2) [Section 5] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the  
26 provisions of Title 61, chapter 8, part 7, apply to [section 5].  
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28       **NEW SECTION. Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
29 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
30 remains in effect in all valid applications that are severable from the invalid applications.

31                               - END -